

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE TERRITORY
OF UTAH.

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Edward Simons, A. Delbert Simons,
Charles Wightman, Henry Gardner,
William Collett, Ole Larson,
Andrew Larson, Niels Larsen, and
August Hjorth,

Plaintiffs,

vs.

William H. Seeley, Myrum Seeley,
Joseph W. Seeley, Andrew Matson,
P.N. Peterson, Martin Peterson, Henry
Spencer, James Pant, (Indian), C.W.
Anderson, Elias Gardner, Olander Pet-
erson, J.W. Tidwell, J.M. Tanner,
Hannah Skitz, John Mouve, Joseph. Nephi
Lehi, Pannawata, Terangup Marump,
Wapita and James Onump,

Defendants.

REPORT OF SPECIAL MASTER
IN CHANCERY.

To the Honorable H. W. Smith,

Judge of the First Judicial District Court:-

Pursuant to an order made by the above named Court on the day of July, 1894, appointing the undersigned Special Master in Chancery with authority to take testimony in the above entitled cause, and to prepare findings of fact and conclusions of law thereon, I hereby respectfully report that the parties in said cause, by their respective counsel, to-wit: J. W. W. Whitson Esq., for plaintiffs, and Honorable W. H. King for defendants, pursuant to a notice issued by me, appeared before me with their witnesses, at Indianola, San Pete County, Utah, on the 3rd day of August, 1894, at which time said witnesses were sworn and testified in said cause, and documentary evidence was submitted from which testimony so taken, and all of the testimony in said cause, I find and the following facts:

1st. That plaintiffs now are, and at all the times mentioned in the complaint were the owners in fee, and entitled to the possession, and in possession of, and cultivating in severalty, about eight hundred acres of land, in what is known as Thistle Valley, in the southern part of Utah County, Utah Territory, and that said land can be cultivated and farmed and made to produce agricultural crops only when it is irrigated with large quantities of water.

2nd. That Thistle Creek is a stream of water which rises in the southern part of Utah County, and flows in a general westerly and north-westerly direction until it reaches a point at the east side of said Thistle Valley, where it is fed by two tributaries, to-wit: Rock Creek and Clear Creek, which each furnish a small stream of water during a part of the irrigation season of each and every year, and said Thistle Creek and its said tributaries, until the 15th day of June of each and every year, except as hereinafter stated, have been diverted and appropriated by the defendants in this action upon lands lying in the south end of Utah County, and the north end of San Pete County, in what is known as Indianola Precinct, said lands being several miles above the lands of the plaintiffs described in said complaint. That said defendants have used the said waters of Thistle Creek, Clear Creek and Rock Creek upon their said lands, as above stated, continuously, openly, uninterruptedly, and adversely, before and since the year 1882, and said

waters, after having been so used by said defendants, have accumulated in the lower part of what is known as Thistle Valley, west of defendants' said lands, and have formed a stream known as Pannawats Slough, which said stream so formed, has during all of said time, been used and appropriated by the plaintiffs in this action, a part thereof flowing down to plaintiffs forming a continuation of said Thistle Creek, and a part thereof being diverted from what is known as Gardner's Dam, east of said slough, and near the boundary line between Utah County and San Pete County.

3rd. That in the year 1882, and for a long time prior thereto the plaintiffs and their grantors and predecessors in interest, and defendant James Pant, Indian, were using, and were the owners of by prior appropriation, and now are the owners of all of the waters of what is known as Pannawats Slough aforesaid, a portion of which is diverted by them at Gardner's Dam, and in addition thereto, said plaintiffs are the owners of all of the waters of said Thistle Creek, and one-fourth of the waters of said Rock Creek and Clear Creek for a period of five days, from six o'clock A. M. of July 10th, to six o'clock A. M. of the 30th day of June, and also for another period of five days, from six o'clock A. M. of July 10th, to six o'clock A. M. of July 15th, of each and every year, and during such periods of five days each, the whole of said Thistle Creek, and one-fourth of said Rock Creek and Clear Creek, mingled with said Thistle Creek, have been used and appropriated by said plaintiffs upon their said lands, and plaintiffs are now the owners thereof. In addition to the water rights hereinbefore named, whenever the waters of Pannawats Slough and Gardner's dam, prior to the 15th day of June in each and every year aggregate less than one-half of the waters of Thistle Creek and one-fourth of the waters of Rock Creek and Clear Creek, mingled together, then plaintiffs are the owners of such portion of said creeks as will, when added to the waters of said Pannawats Slough and Gardner's Dam, equal in quantity one-half of said Thistle Creek, and one-fourth of said Rock and Clear Creeks, as hereinbefore stated. That plaintiffs are also the owners of sufficient water from what is known as the Hyrum Sealey Ditch to irrigate five acres of land, and sufficient water from what is known as the Pannawats Ditch which together with the water from said ditch, will irrigate seven acres of land, except as hereinafter stated. Said portion being the same in quantity as is and may be used by defendants from said ditches on the same quantity of land.

4th. That except during the five days in June and the five days in July, hereinbefore stated, the plaintiffs are not the owners of any of the waters of said Thistle Creek, Clear Creek and Rock Creek, other than water for said five acres and said seven acres, as hereinbefore stated, except when the waters of said Pannawats Slough and Gardner's dam, together with the water for said five acres and said seven acres, in the aggregate are less than one-half of the waters of said Thistle Creek and one-fourth of said Rock and Clear Creeks, as hereinbefore stated.

5th. That defendants are the owners of all of the waters of said Thistle Creek, Rock Creek and Clear Creek from six o'clock A. M. of the 10th day of June to six o'clock A. M. of the 20th day of June, and from six o'clock A. M. of the 30th day of June to six o'clock A. M. of the 10th day of July, and from and after six o'clock A. M. of the 10th day of July down to the commencement of the irrigating season of the following year, during each and every year; and during all other portions of each and every year are the owners of all the waters of said Thistle Creek, Rock Creek and Clear Creek, subject to the rights of the plaintiffs herein, as hereinbefore stated.

6th. That all of the plaintiffs and all of the defendants in this action are interested in the distribution of said waters, and are proper parties to this suit.

7th. That the waters of the said Hyrum Sealey Ditch and the waters of the said Pannawats Ditch flow from, and are a part of the said Thistle Creek, Clear Creek and Rock Creek, and are controlled, regulated and

distributed by the defendants herein.

From the foregoing facts, I find as conclusions of law:

I. That plaintiffs are entitled to all the waters of Thistle Creek and one-fourth of the waters of Clear Creek and Rock Creek, from six o'clock A. M. of the 25th day of June until six o'clock A. M. of the 30th day of June, and from six o'clock A. M. of the 10th day of July until six o'clock A. M. of the 15th day of July, of each and every year; and in addition thereto, that said plaintiffs are entitled to the use of water sufficient to irrigate five acres of land from what is known as the Myrum Seeley Ditch, to be distributed to plaintiffs by the defendants, and to sufficient water from said Pannawats Ditch, to be distributed by said defendants, which, together with the waste water of said ditch, will irrigate seven acres of land, and all of the waters flowing in the stream known as the Pannawats Slough and in Gardner's dam, and whenever said waters, together with the water for said five acres and said seven acres, are less in quantity than one-half of the waters of said Thistle Creek and one-fourth of the waters of said Rock and Clear Creeks, then plaintiffs are also entitled to such a quantity of water from said creeks as will, together with said Pannawats Slough and Gardner's dam, and water for twelve acres, equal one-half of said Thistle Creek and one-fourth of Rock Creek and Clear Creek, as hereinbefore stated.

11. That defendants are entitled to all of said Thistle Creek, Rock Creek and Clear Creek from six o'clock A. M. of the 15th day of June, to six o'clock A. M. of the 25th day of June, and from six o'clock A. M. of the 30th day of June until six o'clock A. M. of the 10th day of July, and after the 15th day of July, to the beginning of the irrigating season following year, of each and every year; and in addition thereto, said defendants are entitled to all the waters of said Thistle Creek, Rock Creek and Clear Creek, except water to which the plaintiffs are entitled, as hereinbefore stated.

Dated Provo.
Sept. 28th 1894

Samuel H. Thurman
Special Master in Chancery